

May 22, 2009

Responsible Official
Applicant Water System Name
Address
City, State Zip

Dear :

RE: ARRA Provisions of Major Consequence to be Considered or Incorporated into Plans, Specifications, and Contract Documents

As you are aware the American Recovery and Reinvestment Act of 2009 (ARRA) requires that projects funded all or in part meet additional requirements beyond those of regular projects. These additional requirements include: projects must be bid requiring American iron, steel, and manufactured goods; project construction wages must be in accordance with the Davis-Bacon Act; projects will be required to provide additional reporting information on a quarterly basis; and finally, the posting of appropriate signage is required at the construction site indicating recovery funds are financing the project.

What does this mean for the Loan Recipient and Consulting Engineer?

Contract Documents will need to include additional information regarding these new requirements to ensure that potential bidders are keenly aware of the ARRA provisions. In order to show unprecedented transparency, contractors must provide to the consulting engineers and loan recipients additional information that will need to be collected and reported on a quarterly basis.

Use of American Iron, Steel, and Manufactured Goods

As you may be aware ARRA includes a Buy American Requirement:

Section 1605(a) of ARRA requires assistance recipients to use domestic iron, steel, and manufactured goods that are produced in the United States. This is the expected means of compliance. Under section 1605(b), a waiver of the “Buy American” requirement maybe issued under specific circumstances identified in the provision.

Waiver Possibilities

- May be received, if applying the “Buy American” provision is inconsistent with public interest (§1605(b)(1)). This waiver could be used in situations where incidental components comprise no more than 5% of the total cost of the materials used in and incorporated into a project.

- United States iron, steel, and manufactured goods are not produced in sufficient and reasonably available quantities or of satisfactory quality (§1605(b)(2)).
- The inclusion of United States iron, steel, and manufactured goods will increase the overall project costs by greater than 25% (§1605(b)(3)).

Waiver Process

- DWSRF assistance recipient requests a waiver from EPA Region 4 with proper and sufficient documentation.
- Regional EPA office will evaluate to determine if the waiver justification is adequate.
- Waiver will proceed to Regional Administrator for concurrence.
- Waiver is signed, dated and recipient is notified.
- Waiver is published in the Federal Register.

As recently discussed in conference calls with the EPA, this provision may present major problems during the bid phase which may impact when the project is expected to begin construction. In anticipation of a waiver situation, we are suggesting that projects be bid with a main or primary bid and an alternative bid. The primary bid would be fully “Buy American” and the alternative bid would be set as a standard bidding situation. Since the loan recipient will be the entity requesting a waiver, the additional required information mentioned above should aid you in that process, if it is deemed necessary. To assist you in the preparation of your bid documents, attached to this memo are examples of language that could be included in those documents and contractor certification with regards to adhering to the requirements of the “Buy American” provisions.

Wage Rate Requirements (Davis-Bacon Act)

According to Section 1606 of the ARRA, projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act will require the payment of not less than the prevailing wages under the Davis-Bacon Act to "all laborers and mechanics employed by contractors and subcontractors." This will be based on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code. Unfortunately, guidance on the implementation of this provision has not been supplied by EPA at this time. However, included in supplemental conditions is the information that should be included in any documents for potential bidders. If additional information becomes available, it will be passed along to you.

Reporting Requirements, Tracking & Documenting Expenditures

While specifics are not exact at this time, the ARRA will have additional reporting requirements. It will be the responsibility of the loan recipient to report the information to the State, but the final contract bidder will have to assist with the collection of the needed information on a regular basis during the construction phase. Once final specifics on the reporting requirements are given, a standard reporting form will be prepared by this office and distributed to the loan recipients and the consulting engineers.

Proper Signage Associated with ARRA Funding

Projects funded all or in part with ARRA funds will be required to post an appropriate proper signage at the construction site. Said signage will indicate that the project is being funded by the ARRA through the Drinking Water System Improvements Revolving Loan Fund Program. Signage specifications will be supplied at loan award.

In closing, we realize that these additional requirements may be cumbersome to accomplish. Please know, also, that these requirements may change, based on further directions from EPA. Our hope is that some of the requirements may be relaxed. For those of you who have already solicited bids for your project(s), we regretfully inform you that your project will have to be re-bid with the ARRA provisions. Our DWSRF Program staff will assist you and your consulting engineers in anyway we can to make the process as least painful as possible.

If you have any questions concerning the new required provisions or other ARRA requirements, please contact me at 601-576-7518 or by e-mail at wmoody@msdh.state.ms.us.

Sincerely,

William F. Moody, P.E., BCEE
Director, Drinking Water SRF
Bureau of Public Water Supply

cc: Consulting Engineer